

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Criminal No.
04-10098-WGY

* * * * *
UNITED STATES OF AMERICA
v.
CARMEN FIGUEROA
* * * * *

SENTENCING EXCERPT

BEFORE: The Honorable William G. Young,
District Judge

APPEARANCES:

SUSAN M. POSWISTILO, Assistant United
States Attorney, 1 Courthouse Way, Suite 9200,
Boston, Massachusetts 02210, on behalf of the
Government

JOHN H. LaCHANCE, ESQ., 600 Worcester Road,
Suite 501, Framingham, Massachusetts 01702, on
behalf of Carmen Figueroa

1 Courthouse Way
Boston, Massachusetts

July 12, 2005

1 **THE COURT:** Ms. Carmen Figueroa --

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** -- pursuant to the provisions of 18
4 United States Code, Section 3553, the information from the
5 United States Attorney, your attorney, the probation officer
6 and yourself, this Court sentences you to eight years -- 96
7 months -- in the custody of the United States Attorney
8 General.

9 The Court imposes thereafter a period of five years
10 of supervised release to follow; no fine due to your
11 inability to pay a fine; a \$100 special assessment.

12 The Court puts the following special conditions on
13 your supervised release. That you are to refrain from the
14 unlawful use of a controlled substance and submit to drug
15 testing during the period of supervised release not to
16 exceed 104 drug tests per year; submit to a collection of a
17 DNA sample.

18 You're prohibited from possessing a firearm,
19 destructive device or other dangerous weapon. You're to
20 participate in mental health treatment as directed by the
21 probation office. You're required to contribute to the
22 expense of these treatments.

23 Let me explain this sentence to you. This sentence
24 is adequate but does not exceed what is necessary to achieve
25 the goals of the criminal law. I am satisfied that you need

1 no particular term of incarceration to deter you from this
2 type of further criminal conduct. I take you as a generally
3 passive person and until you were imprisoned and, to your
4 credit, took advantage of the rehabilitation that's
5 available in prison, I don't think you seriously
6 contemplated or considered what your options were or how
7 your passively going along with this conduct contributed to
8 a most serious criminal experience -- serious criminal
9 conspiracy. I hope, but it is only a hope, and I will do
10 whatever I can to make available to you the rehabilitation
11 devices and programs that are present in prison.

12 The sentence is an appropriate sentence to punish
13 you. Eight years is a long, long time. It accomplishes the
14 goals of general deterrence without distinguishing on the
15 basis of who was the girlfriend and who is the female, but
16 accurately distinguishes as between the leader of the
17 criminal enterprise, Mr. Mendes, the supplier, Mr. Tejeda,
18 the principal lieutenant, Mr. Custer, and you, who were at
19 the center but were simply carrying out orders. Given the
20 extensive conspiracy for crack cocaine, this eight year
21 sentence is an appropriate sentence.

22 Now, why do I not follow the strong advice of the
23 congress and sentence you to 188 months, nearly sixteen
24 years. I do not primarily because the guidelines themselves
25 have a ground for a lower sentence when the crime is in part

1 the result of coercion and distress -- duress not sufficient
2 to warrant the defense. And as I've already said, though it
3 was surely a triable case, this wasn't a duress case here.
4 The jury was right. If you look back on this, you were not
5 under duress.

6 But I do -- so we're clear, on a factual record, I
7 find by a fair preponderance of the evidence that
8 Ms. Figueroa engaged in a relationship which by its very
9 nature is an abusive relationship commencing at age
10 thirteen, had her first child by Mr. Mendes at fourteen, had
11 a second child, was beaten by Mr. Mendes upon his release
12 from prison the first time, was subjected to twelve to
13 fifteen communications all in very short periods of time,
14 his phone calls while in prison. All of which would lead a
15 reasonable person to believe that Mr. Mendes was
16 significantly in control of his own terms of confinement in
17 that prison. Disgraceful as this may be, he could interrupt
18 her life with his phone calls on a continuing basis.

19 Now, I do not find that she's a battered woman. I
20 do not find that she suffers from any such syndrome. At the
21 same time, any fair assessment of this evidence would lead,
22 leads me, and I'm the fact finder here, to conclude that
23 this passive individual, suffering what has got to be
24 considered abuse at a most impressionable age, remained
25 passive to his instructions, however improper and criminal

1 those instructions were, thereafter and, therefore,
2 consistent with this Court's reasoning in United States v.
3 Osseiran, this is a case where 5K2.12 is appropriate.

4 To the extent that I need -- to the extent that any
5 further coloration is warranted, I take comfort from the
6 fact that the guidelines are advisory and that this
7 sentence, given the sentence, each individual sentence,
8 fairly and impartially imposed upon the other offenders,
9 this sentence is appropriately proportional and is a fair
10 and a just sentence consistent, and therefore reasonable,
11 with the criteria of Section 3553.

12 Ms. Figueroa, you shall have credit toward the
13 service of this sentence from the period from March 16,
14 through March 19, 2004, and from May 20, 2005 to the
15 present.

16 You have the right to appeal from any findings or
17 rulings the Court has made against you. Should you appeal
18 and should your appeal be successful in whole or in part and
19 the case remanded, any further proceedings will be before
20 another judge.

21 Mr. LaChance, should you appeal, and I guess I
22 should say this to the government, too, if anyone's going to
23 appeal here, I want you to make the request for
24 transcript -- well, the government doesn't have to make the
25 request, but you, Mr. LaChance, as it's government money,

1 have to make a request, make that request before you file
2 your notice of appeal and I lose jurisdiction, so that I can
3 turn it around immediately and we don't have to wait for the
4 preparation of transcripts.

5 Do you understand?

6 **MR. LaCHANCE:** I believe so, your Honor. You want
7 me to make it --

8 **THE COURT:** Before you file your notice of appeal.

9 **MR. LaCHANCE:** -- before I file the notice so that
10 you can approve it and --

11 **THE COURT:** Which I will do within 24 hours.

12 **MR. LaCHANCE:** All right.

13 **THE COURT:** That's the sentence of the Court.

14 **MR. LaCHANCE:** Thank you, your Honor.

15 **THE COURT:** She's remanded to the custody of the
16 marshals.

17 We'll take a brief recess.

18 **MR. LaCHANCE:** Your Honor?

19 **THE COURT:** Yes.

20 **MR. LaCHANCE:** I did forget to ask for one thing,
21 and that is whether your Honor would recommend the 500-hour
22 drug program.

23 **THE COURT:** I do recommend the 500-hour drug
24 program; it will be included in the judgment and commitment
25 order.

1 **MR. LaCHANCE:** Thank you, your Honor.

2 **THE COURT:** That's the sentence. We'll recess.

3 **THE CLERK:** All rise.

4 (Whereupon the matter concluded.)